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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

E.R.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY et. al.,

Real Parties in Interest.

D070381

(San Diego County  
Super. Ct. No. NJ14846D)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code<sup>1</sup>

section 366.26 hearing. Michael Imhoff, Commissioner. Petition denied.

Law Office of Donna P. Chirco and Donna P. Chirco for Petitioner.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Paula J. Roach, Senior Deputy County Counsel, for Real Party in Interest San Diego County Health and Human Services Agency.

E.R. (Father) seeks review of a juvenile court order setting a hearing under section 366.26 with respect to his and E.V.'s (Mother's) minor son, Enrique R.<sup>2</sup> Father contends the court erred in denying his request to extend reunification services to the 18-month review date and in finding he received reasonable reunification services. We conclude the record contains substantial evidence to support these determinations and deny the petition.

## FACTUAL AND PROCEDURAL BACKGROUND

### *I. Detention*

Enrique was born in February 2015. E.R. and E.V. were married and had two older children. The day after Enrique's birth, the San Diego County Health and Human Services Agency (the Agency) removed him from parental custody. The Agency filed a petition on Enrique's behalf under section 300, subdivision (b), based on his young age and the parents' history of domestic violence (including an incident while Mother was pregnant with Enrique).

That month, social worker Betty Saavedra provided the Agency's detention report. It addressed the parents' history, the situation when Enrique was born, and input from Father. The Agency had received domestic violence referrals regarding the parents in

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<sup>2</sup> Mother did not file a petition. We discuss her only to the extent necessary to provide context for Father's claims. Enrique joins the Agency's arguments.

2012 and 2013. Father had been referred to a domestic violence group and a program for military men transitioning to civilian life. In May 2013, he was arrested for domestic violence, but charges were dropped. In August 2013, the older children were removed due to domestic violence. The parents received reunification services, and Father began a 52-week domestic violence program and therapy. In April 2014, Mother reported Father "body slammed" and punched her. Father was arrested, but charges again were dropped. In May 2014, reunification services were terminated, but Father continued the domestic violence program.

In August 2014, while Mother was pregnant with Enrique, there was another incident. According to Mother, Father was drinking and she asked him to stop. She wanted to leave the house, but he placed her in a chokehold, would not let her leave, and took her phone. The next day she called the police and Father was arrested, but charges were dropped. In September 2014, Mother obtained a restraining order against Father, set to expire in September 2019. The order prohibited Father from contacting Mother or going within 100 yards of her home, except for "brief and peaceful contact" as required for court-ordered child visitation (and that contact was limited to text or email).

When Enrique was born in February 2015, Saavedra spoke with the hospital social worker and asked if there were any concerns. The hospital social worker indicated "their concern [was] more historical," based on Mother's history. Later that month, parental rights for the older children were terminated.

Father told Saavedra that he and Mother had "a couple fight[s]," which consisted of "yelling, screaming . . . getting close." There had been a "couple of times" where they

would block each other from leaving, as well as physical contact. The older children were exposed to the fighting. Father also discussed the last physical altercation between them (but said it was in September 2014, not August 2014). He tried to hug Mother to calm her, she told him to get off, and he did. As for her claim that he put her in chokehold, he said it "was possible as he tried to place his arms around her from the side." He denied any violence since that day.

Saavedra asked Father what had changed since the older children's removal. He reported, among other things, that he completed the domestic violence program, he and Mother had taken a posttraumatic stress disorder (PTSD) class, and he was attending counseling at the VA (presumably referring to veterans' services). He had learned "time out reporting," which involved talking when both he and Mother were calm. In addition, he and Mother were "not fighting or arguing like before," and now had " 'little' arguments which last[ed] 3-5 minutes." When asked what support he had, he identified the paternal grandmother and the VA. As for his living situation, Father told Saavedra he was renting a room, but saw Mother "around three times a week" and "stay[ed] overnight."<sup>3</sup> The report noted elsewhere that the parents indicated they had resolved the domestic violence issues.

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<sup>3</sup> Father told the adoption social worker for the older children that he had been living with Mother in her home since June 2014.

At the detention hearing, the juvenile court ordered reunification services for Father, consisting of counseling and domestic violence services, but held Father "DOES NOT have to re-start his current DV program."

## II. *Jurisdiction*

Social worker Christian DeVito provided the Agency's March 2015 jurisdiction report, with further input from Father. Father said there had been three reported and possibly six unreported domestic violence incidents, in his three-year relationship with Mother. The encounters were mutual, with both parents hitting each other. Father again described the last physical altercation between them, now indicating it occurred in August 2014 and explaining he held Mother down during an argument when she was trying to leave.<sup>4</sup>

Father was unclear on what contact was restricted by the restraining order, said he had not been served with it, and believed there could be "peaceful contact." He spent three days at Mother's home before and after Enrique's birth, and also stayed there "on occasion . . . ." DeVito explained the restraining order's prohibitions, and Father indicated he now understood they had violated the order. Father agreed to follow it, but noted Mother was going to have it amended.

Father told DeVito about his completion of the domestic violence program and a parenting class. He also had been seeing VA therapist Sydney Barnwell on a weekly basis since December 2014. Among other issues, he and Barnwell addressed Father's

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<sup>4</sup> This account appeared to differ from his prior recollection (but aligned with Mother's). Either way, Father acknowledged a physical encounter in August 2014.

PTSD and the "domestic violence dynamic" in his relationship with Mother and its effect on his children. Father indicated he was motivated to make necessary changes, including separating from her.

The Agency expressed concern the parents had not been able to implement what they had learned in their services; suggested they lacked insight into the dynamics of domestic violence; and found they continued to put their relationship ahead of the children's needs.

Later in March 2015, the Agency submitted Father's case plan. His objectives were to "develop positive support systems with friends and family" and to "not behave in a manner that is verbally, emotionally, physically, or sexually abusive or threatening." His services were individual therapy and random drug testing (as well as the domestic violence program, which it appears he was not required to restart.)

### III. *Six-Month Review*

Social worker Todd Clark provided the Agency's October 2015 six-month status review report. The report addressed events since the prior report, information from Barnwell, and other matters. In May 2015, Mother twice interrupted Father's visits with Enrique. The first time, she demanded Father return her spare key; the second time, she said he needed to call her right away after the visit. In June 2015, the parents modified the restraining order to permit therapy together and so Father could contact Mother at work. In August 2015, Mother reported to Clark that Father sent her texts consisting of "Fuck you I hope you gets aids you skinny bitch" and "Go suck a dick." A few days

later, she told Clark she regretting sharing the messages and that Father apologized for sending them.

In June 2015, Barnwell spoke with Clark and reported that Father was "totally emotionally dependent" on Mother and it was "hard for [him] to be independent." He expressed concern that Father minimized the domestic violence and restraining order. Barnwell also noted that discussions between the parents turned into an argument. In September 2015, Barnwell reported the focus of Father's sessions was reconciliation with Mother and he had started to ask for conjoint sessions. Barnwell felt the parents were not ready for reconciliation, not aware of how to argue safely, and not ready for conjoint therapy. Barnwell was working with Father on understanding the restraining order.

Additional matters in the report included Father's solution-focused inquiry responses and his perception of his needs. Solution-focused inquiry helps parents articulate insights and identify relevant experiences. Father's responses were "minimal" and did "not address the specifics of the history of DV . . . ." As for Father's view of his needs, he felt the restraining order was no longer necessary and he had learned to set boundaries and use time-outs.

The Agency found that whatever the parents learned in services was "not sufficient to prevent additional violence," and there was no demonstration of behavioral change. It also found the parents had "not accepted responsibility for their actions that led to the removal of Enrique," and were not following the restraining order. The Agency acknowledged Father was in therapy, but observed he "appear[ed] to focus . . . on reconciliation with Mother as opposed to learning DV dynamics and reunifying with

Enrique." With respect to support, the Agency stated the parents had not developed positive support systems (that it was aware of) and appeared to rely solely on each other. The Agency had other concerns as well, including the parents' efforts to amend the restraining order and their minimization of the domestic violence. The Agency recommended that reunification services be terminated.

In December 2015, the juvenile court held the six-month hearing. The court found Father had made "some progress" in his case plan and continued his reunification services to the 12-month review date. The court terminated reunification services for Mother.

#### *IV. Twelve-Month Review*

In April 2016, Clark provided the Agency's 12-month status review report. The report described contact between the parents in February and March 2016, and more input from Barnwell and Father. On March 4, 2016, Mother told Clark that Father visited her apartment on February 19 or 26. He hit her "so hard," put "his knee across [her] chest" and put her in a "restraint hold." Father would not let her leave for the weekend. She did not tell Clark initially, because she was "trying to work [through] it." Then, on March 3, Father broke in and stole her Wi-Fi equipment. On March 4, Mother filed a police report.

On March 6, 2016, Clark met with Father. According to Father, he visited Mother on February 26 or March 3, to help her out by bringing food. He denied going to her home on February 19, but he did go there earlier in February to bring some items. Her car had been repossessed and she asked for help retrieving possessions from it; he did so

and took them to her. He also dropped off a tablet sometime that month. Father believed the restraining order allowed for peaceful contact.

On March 8, 2016, Mother sent Clark screenshots of text messages with Father. One text from Father reflected he was outside her home ("open the door"), while others were insulting (*e.g.*, "U got pick up to get dick down;" "Then go get on your knees and blow for rent money;" "Awesome I'm rooting for you team villa loser.")<sup>5</sup> On March 10, Clark received a voicemail from a police officer, regarding Mother's police report. Police documentation received by Clark reflected the police found probable cause to arrest Father, but by March 15, he had not been arrested.

In November 2015, Barnwell reported Father was verbalizing he was ready for divorce (though he could not be sure Father was serious) and had "finally realized the toxic nature" of the relationship. In January 2015, Barnwell indicated Father attended a divorce workshop and "seem[ed] mentally preparing for divorce." Barnwell was "70 [percent] convinced" that Father was serious about ending the relationship, but still felt Mother had influence over him. On March 15, 2016, Barnwell said he was working with Father on establishing a strong support network, noting that he did not have one, but was not sure Father had taken steps to do so yet.<sup>6</sup> He recalled that at their last session, Father was "shaky," "feeling guilty about moving forward with the divorce," and appeared to be

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<sup>5</sup> Still other messages reflected contact between the parents (*e.g.*, Mother stating: "I want to say more, but there is a place for this and it isn't here;" Father asking: "How come your [sic] not in church with me?")

<sup>6</sup> The report identified the January and March conversations with Barnwell as being in 2015. Based on the context, we assume that was a typographical error.

"going back to old ways of thinking." He was surprised to hear about the allegations against Father and that he admitted to being in contact with Mother. He had continued to talk to Father about the restraining order and was disappointed he violated it. He conceded Father had not taken full responsibility for his part in the domestic violence.

Father maintained he had learned to minimize the risk of domestic violence. The Agency found he did not appreciate the severity of the situation, and had not been able to implement what he had learned or exhibit change. It noted that, despite services, he "still demonstrate[d] disturbing and potentially criminal behaviors" toward Mother.

Referencing Father's version of the recent events, the Agency found he put himself at risk of arrest and put reunification in jeopardy, by engaging in acts like helping Mother with food, but the risks had not deterred him. The Agency noted that when Mother's services were terminated, the importance of severing ties was impressed on Father, but he appeared "unwilling or unable to break away" from her. It concluded that, based on the recent events, it had "minimal confidence [Father] would be protective of Enrique . . . ." The Agency recommended reunification services be terminated.

In May 2016, the juvenile court held the twelve-month review hearing. Among other things, Father was requesting that reunification services be extended to the 18-month date and challenging the adequacy of his services.

Clark testified he was obligated to meet with parents monthly and attempted to do so with Father, but could not confirm they met every single month. Father's counsel asked about meetings from December 2015 onward. Clark did not recall if he met with Father in December or January, but "[b]ased on [his] memory, . . . would have to say" he

met with him in January 2016. He assumed he met with Father in February, and did meet with him in April and March.

Clark did not think Father had made progress on his case plan, but had not considered referring him to other services. He explained: "He's going to services. . . . But he is not demonstrating change. He's not requesting any other services that he thinks might be able to help him . . . ." Clark addressed why he did not consider a different therapist, noting first that the decision to let him to see Barnwell was based on respect for his veteran status and his relationship with the VA and Barnwell. Clark further explained: "[Father] never expressed any concern that he wasn't making progress . . . [and] reported that he enjoyed going . . . . I didn't see a reason to change. It's not unusual for a parent to go through services, but not yet demonstrate desired change, behavioral change." Clark also noted Barnwell had not given any indication that Father would make better progress under a different therapist and never suggested that Father try a different approach. As for another domestic violence program, Clark said he would consider it if Father asked, but the request had not been made.

Father testified about his services and what he learned, including his domestic violence program (where he learned to avoid fights and keep his mind off the situation). As for therapy with Barnwell, Father felt he was benefiting and noted Barnwell advised him "to not avoid this problem" anymore. Father also described his visits with Enrique.

Father addressed the February and March 2016 incidents. He initially denied going to Mother's house in February 2016, indicated her account was not accurate, and then provided his version of the events. Father explained Mother had his "club" in her

car.<sup>7</sup> He went to her home to retrieve the club, but could not, because the car was impounded. As for the tablet, he said Mother gave it to him, but wanted it back, and he left it at her door. He agreed he went to her house, but he did not go inside. Father denied breaking into Mother's apartment in March, but acknowledged exchanging text messages with her that month. When asked if he understood the order prohibited such contact, he responded: "I'm aware now. Before it said it was modified." At the time, he did not believe the messages violated the order and would not have sent them if he thought they did.

Father indicated the last time he had contact with Mother was on March 7, 2016. He had a new phone number, which she did not have and he would not let her have. He had also moved to a new address; she did not know where he lived and he was not going to let her know. Father was pursuing divorce and had filed a response to Mother's divorce petition.

Father felt he made significant progress in resolving the problems that led to removal. He explained: "I don't really feed into that any more. Like all the problems that I had in the past. That's why I go to counseling. . . . I stay consistent with what I'm doing to keep my child and myself healthy in the environment." By "feed into that," he meant "all the negativity that's going on." Minor's counsel asked Father if he agreed with Barnwell's view that he had not taken full responsibility for his part in the domestic violence. Father replied: "Not a hundred percent. But I did make some mistakes and I'm

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<sup>7</sup> By club, we assume Father was referring to a steering wheel locking device.

aware of that. So I mean, that's why he's getting on my case with that, so I'm really learning."

The parties presented their arguments, focusing on the requirements for more reunification time (*i.e.*, consistent visitation, significant progress in resolving the domestic violence, and ability to complete the case plan and protect Enrique), and reasonable services.<sup>8</sup> County counsel had no issue with visitation, but maintained Father had not established the other requirements, and also that reasonable services were provided. Father's counsel contended he met the requirements for additional reunification time, had not received reasonable services, and would benefit from other services. Minor's counsel asked the court to adopt the Agency's recommendations.

The juvenile court provided its findings. The court found Father's account of the events in February 2016 more credible. However, it noted he viewed taking the tablet to Mother's home as a "normal everyday occurrence," and that this was a clear violation of the restraining order. The court also found the text messages "very, very significant," observing that domestic violence and the restraining order had been "ongoing discussion[s]" in therapy and that the messages reflected "a significant amount of either venting or anger projection." The court did not get the impression Father understood the restraining order prevented him from annoying or harassing Mother. The court also observed the parents' relationship had a destructive dynamic, and neither had been able to leave it in a healthy fashion.

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<sup>8</sup> We discuss the applicable standards here in more detail, *post*.

The court found by clear and convincing evidence that reasonable services were offered and provided to Father. It determined the case plan remained reasonably fashioned to prevent the need for removal and Father was making "some progress" on it. It also found that allowing Father to do his therapy through the VA was, and remained, a good decision. The court noted Father had PTSD issues (which the military was experienced in helping with) and that he had a rapport with his therapist. The court felt changing therapists likely would hinder therapy progress, rather than enhance it.

The court then found it could not conclude there would be a substantial probability Enrique could be returned to Father by the 18-month date (which was just under 90 days away) and denied the request for additional reunification time. After finding there was consistent visitation, the court addressed Father's progress and his capacity and ability to complete his case plan and protect Enrique. It observed the recent events had caused a "great deal of turmoil" to Father's progress, noting the repeated restraining order violations and "alarming" text messages. The court then stated it could not find Father had the requisite capacity and ability, explaining that while it viewed him as well-intentioned and intelligent, it also saw him as "completely incapable of overcoming whatever this powerful force is that keeps dragging [the parents] into these unhealthy interactions."

The court terminated reunification services and set a section 366.26 hearing. Father filed a petition for writ review.

## DISCUSSION

### I. *Denial of Additional Reunification Time*

Father contends the court erred in denying additional reunification time and terminating reunification services. This argument lacks merit.

#### A. *Applicable Law*

Under section 366.21, subdivision (g)(1), the court shall continue a case to the 18-month date only if it finds there is a "substantial probability that the child will be returned to the [parent's physical custody] and safely maintained in the home" by that time.<sup>9</sup> In order to find such substantial probability, the court must find: (1) the parent has "consistently and regularly contacted and visited with the child;" (2) the parent has "made significant progress in resolving problems that led to the child's removal;" and (3) the parent has "demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1)(A), (B) & (C).)

We review "the correctness of an order pursuant to section 366.21 to determine if it is supported by substantial evidence." (*In re Shaundra L.* (1995) 33 Cal.App.4th 303; see *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689.) "The appellant has the burden of showing the finding or order is not supported by substantial evidence." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

#### B. *Analysis*

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<sup>9</sup> The case can also be continued when reasonable reunification services were not provided. (§ 366.21, subd. (g)(1).) As discussed *post*, Father was provided reasonable services.

Substantial evidence supports the juvenile court's determination that there was not a substantial probability Enrique could be returned to Father by the 18-month date.<sup>10</sup>

First, the court found, and the parties do not dispute, that Father satisfied the visitation requirement. This factor is not at issue.

Second, there is substantial evidence that Father had not made significant progress in resolving the domestic violence issues that led to Enrique's removal. He began receiving services for domestic violence by 2013, but continued to engage in this behavior. Although the last reported physical altercation was in August 2014, it resulted in a restraining order. Father repeatedly violated the order, from before Enrique was born to well after he was removed, and some of those interactions were abusive (*e.g.*, the text messaging). By March 2016, 13 months after Enrique's removal—and over two and a half years after removal of the older children—Father's therapist felt he had not taken full responsibility for his role in the domestic violence. Meanwhile, while Father testified he was "really learning," he also appeared to believe he had already minimized domestic violence. That belief both reflected his lack of progress, and suggested he was not likely to make further progress without a change in perspective. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge."].)

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<sup>10</sup> Father does not argue there is an absence of substantial evidence for this ruling, which he must establish to meet his burden here. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.) Rather, he contends there was a substantial probability that Enrique would be returned to him by the 18-month date. Nevertheless, we elect to address the argument on the merits.

Based on this record, the juvenile court could reasonably conclude that Father failed to make significant progress.

Father's arguments that he made substantive progress are not persuasive. He suggests he took "responsibility for his actions." But the Agency and Barnwell felt he had not done so. The court was entitled to give greater weight to their input than Father's, and we will not reweigh evidence on substantial evidence review. (*A.A. v. Superior Court* (2012) 209 Cal.App.4th 237, 242.) Father then discusses the services he completed and what he learned. But simply completing services is not sufficient where, as here, there is evidence that Father was unable to apply what he learned. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1143 [rejecting argument that "mere completion of the technical requirements of the reunification plan," such as attending counseling, was sufficient to show progress].) Finally, Father refers to the events of February and March 2016 as "a small setback" and contends he took "major remedial steps," including moving, changing his number, and not giving Mother his information. However, the Agency viewed Father's conduct during this period as disturbing, and there was no evidence these steps would actually result in sustained, reduced contact. Indeed, Father had been under a restraining order since September 2014, and yet continued to interact with Mother. (See *A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050, 1062 [extent of parent's progress "necessarily depends on the parent's efforts and successes during the entire reunification period"]; *In re Brian R.* (1991) 2 Cal.App.4th 904, 918 [juvenile court had duty to evaluate father's "efforts against his previous failings"].)

Turning to the third requirement, there was substantial evidence that Father lacked the capacity or ability to complete his plan objectives and provide for Enrique's safety and well-being. First, there is evidence Father lacked the capacity to meet his case goals (*i.e.*, developing a support network and not behaving in an abusive or threatening manner). He did identify the paternal grandmother and the VA as sources of support in February 2015. But the Agency found in October 2015 that Mother was his sole source of support, and Barnwell indicated in March 2016 that Father still lacked a support network and he was not sure he had taken steps to build one. The evidence also reflects Father had not resolved his abusive behavior, despite what he learned in services. Instead, he remained in contact with Mother, leading to both actual acts of aggression and the potential for further incidents. Second, and in turn, Father's inability to cease contact with Mother and ensure a safe environment for Enrique undermined his ability to protect him.

Father's arguments again are unpersuasive. With respect to his case plan, he argues he was consistent in attending and completing services, had a strong relationship with his therapist to help him through the divorce, and had cut off contact with Mother. Again, however, there is no dispute that Father was participating in services, or that he was taking steps to reduce contact with Mother. The problem is that, despite these efforts, he was not demonstrating the ability to build a support network separate from Mother or actually cease contact with her. As for protection of Enrique, Father simply describes their visits and claims "there were no concerns about [his] ability to provide care for Enrique." But visitation is a separate requirement, and not at issue here. Rather,

the focus is on Father's ability to keep Enrique safe in light of the domestic violence, and far from there being "no concerns," the Agency had "minimal confidence" that Father would be protective of Enrique.

We conclude the juvenile court's denial of Father's request to extend reunification services to the 18-month review date was proper.

## II. *Reasonable Reunification Services*

Father argues that substantial evidence does not support the juvenile court's finding that he received reasonable reunification services. We disagree.<sup>11</sup>

### A. *Applicable Law*

"The adequacy of reunification plans and the reasonableness of [the Agency's] efforts are judged according to the circumstances of each case." (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 (*Amanda H.*)). The Agency "must make a good faith effort to develop and implement a family reunification plan. [Citation.] '[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made

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<sup>11</sup> The Agency suggests Father forfeited his reasonable services argument by failing to raise it "when [the juvenile] court could have rectified any deficiency." But Father's counsel raised the issue at the 12-month review hearing, when additional reunification time could have been possible if reasonable services had not been provided. (§ 366.21, subd. (g)(1); cf. *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1111 [adequacy of reunification services was waived by failure to object at the time services were terminated].) In any event, we need not resolve this issue, given our conclusion that Father's argument is without merit.

reasonable efforts to assist the parents in areas where compliance proved difficult . . . ' " *(Ibid.)*

The court's finding that reasonable reunification services were offered or provided is reviewed for substantial evidence. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*.)

### B. Analysis

Substantial evidence supports the juvenile court's determination that Father was offered and provided reasonable reunification services. As required, the Agency made a good faith effort to formulate and implement reunification services appropriate to the situation. (*Amanda H., supra*, 166 Cal.App.4th at p. 1345.) By the time Enrique's case commenced, the Agency was aware of the parents' history of domestic violence and Father's previous service referrals. Father, a veteran with PTSD issues, had already completed a 52-week domestic violence program and established a relationship with Barnwell, a VA therapist. Father addressed his domestic violence issues with Barnwell, rather than restarting a domestic violence program. Agency social workers met with Father throughout Enrique's case and Clark, the final social worker on the case, testified he met or attempted to meet with him monthly.

Father maintains he was not offered reasonable services, on the grounds that Clark could not confirm he met with Father every month, did not provide him with new referrals (despite his concerns about Father's lack of progress), and unreasonably "passed the responsibility" to Father to know what he needed and request it. These arguments lack merit.

First, there is no dispute that Clark attempted to meet with Father every month. Father cites no authority to suggest these efforts are insufficient, just because Clark does not recall if every meeting actually took place. To the contrary, the record simply must reflect "reasonable contact" between the Agency and Father, and Father had his own obligation to participate in the process. (*Amanda H.*, *supra*, 166 Cal.App.4th at p. 1345; see *In re Raymond R.* (1994) 26 Cal.App.4th 436, 441 [noting the parent's "obligation . . . to communicate with the [Agency] and participate in the reunification process"].) Clark's efforts here were reasonable.

Second, neither Father's lack of progress, nor the existence of other possible services, undermine the adequacy of the services he received (See, *e.g.*, *In re Laura F.* (1983) 33 Cal.3d 826, 838-839 [in light of the three years of counseling and social worker advisement, the mother's "failure to win back the children indicates her lack of interest or capacity rather than the inadequacy of the services . . . ."]; *Misako R.*, *supra*, 2 Cal.App.4th at p. 547 ["In almost all cases it will be true that more services could have been provided . . . . The standard is . . . whether the services were reasonable under the circumstances."].) Here, Father's own therapist did not suggest he should be seeing a different therapist or pursuing a different plan, and the juvenile court found changing therapists could actually hinder his progress. Meanwhile, Father directs us to no evidence that more or different services were warranted, nor does he explain how such services would aid his progress. Although his trial counsel did contend other services

would be beneficial, at the 12-month review hearing, such statements by counsel are not evidence. (*In re Zeth S.* (2003) 31 Cal.4th 396, 414, fn. 11.)<sup>12</sup>

Third, the record does not reflect Clark passed responsibility to Father to request services. Rather, Clark simply testified Father had not requested other services; he also testified that Barnwell never indicated a different plan was necessary and that it was not unusual for a parent to not yet demonstrate change. To the extent Clark considered Father's input, or lack thereof, in assessing services, such consideration was appropriate. (See *In re Christina L.* (1992) 3 Cal.App.4th 404, 416 ["If Mother felt during the reunification period that the services offered her were inadequate, she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan."]; see also *In re Raymond R.*, *supra*, 26 Cal.App.4th at p. 441.)

We conclude there is substantial evidence that Father was offered and provided reasonable reunification services.

## DISPOSITION

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<sup>12</sup> Father also contends it was "unreasonable not to refer [him] to domestic violence services." But Father was working on domestic violence issues; he was just doing so with Barnwell, rather than in another domestic violence program.

The petition is denied.

O'ROURKE, J.

WE CONCUR:

McDONALD, Acting P. J.

AARON, J.